



ROUTING FORM FOR AGREEMENTS – CITY MANAGER’S APPROVAL

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Project/Contract Number: 11887 CMO Log #: _____
 Document Title: Agreement – Art Light Space – Water Tower Art Project Attached: _____
 Department: Public Works - Engineering

Originals
3 (GRH)

Purpose: This Agreement is for the artist services necessary to design, permit and observe construction of the decorative painting and lighting system on the City’s Water Tower located at 625 NW 2nd Avenue.

FUNDING INFORMATION

CIP Funded Project: Yes No
 Amount Required by Task Order: \$201,800.00
 Index/Sub Object Code: Funding Source not yet identified
 Engineering Finance Approval Sign: 1/5/16

APPROVAL ROUTING – PUBLIC WORKS

	Approved:	Disapproved:	Signature/Date
Steve Hillberg, Project Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i> 5 JAN 2016
Jorge Holguin, Senior Project Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i> 1/5/16
Annalise Mannix, Acting Assistant City Engineer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>
Alan Dodd, Assistant Public Works Director – Engineering	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>
Paul Berg, Acting Public Works Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>

APPROVAL ROUTING – CITY ATTORNEY’S OFFICE

	Approved as to form:	Disapproved:	Signature/Date
City Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>

APPROVAL ROUTING – CITY MANAGER’S OFFICE

	Approved:	Disapproved:	Signature/Date
Lee R. Feldman, ICMA-CM, City Manager	<input type="checkbox"/>	<input type="checkbox"/>	

CITY CLERK’S OFFICE Upon approval by the City Manager, please route this form along with Agreement to PW- Engineering, Kian Movafaghi (Ext. 7818).

AGREEMENT

Between

City of Fort Lauderdale

and

Art Light Space, LLC

for

ARTIST CONSULTANT SERVICES

for

NORTHWEST SECOND AVENUE WATER TOWER ART PROJECT, P11887

THIS IS AN AGREEMENT made and entered into this 18th day of August, 2015, by and between:

City of Fort Lauderdale, a Florida municipality,
(hereinafter referred to as "CITY")

and

Art Light Space, LLC., a Florida limited liability
company, (referred to as "ARTIST
CONSULTANT").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of August 18, 2015 authorized by motion the execution of this Agreement between ARTIST CONSULTANT and CITY authorizing the performance of artistic and computer design services and design and construction inspection services, (the "Agreement"); and

WHEREAS, the ARTIST CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the parties hereto, do agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 AGREEMENT: The document between the CITY and ARTIST CONSULTANT dated August 18, 2015 and any duly authorized and executed Amendments to Agreement.
- 1.2 CERTIFICATE FOR PAYMENT: A statement by ARTIST CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that CITY pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 CHANGE ORDER: A written order to the ARTIST CONSULTANT approved by the CITY authorizing a revision to this Agreement between the CITY and the ARTIST CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.

The ARTIST CONSULTANT may review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

- 1.4 CITY: The City of Fort Lauderdale, a Florida municipality.
- 1.5 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.6 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.7 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project designed or specified by the ARTIST CONSULTANT.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 ARTIST CONSULTANT: Art Light Space, LLC, the ARTIST CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the City of Fort Lauderdale, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by ARTIST CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.

- 1.16 **OMISSION**: A scope of work missed by the ARTIST CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.
- 1.17 **ORIGINAL CONTRACT PRICE**: The original bid and/or contract price as awarded to a Contractor based upon the ARTIST CONSULTANT'S final detailed Construction Documents of the Project.
- 1.18 **PLANS AND SPECIFICATIONS**: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY as provided in this Agreement.
- 1.19 **PRELIMINARY PLANS**: The documents prepared by the ARTIST CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.20 **PROJECT**: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the ARTIST CONSULTANT shall be as defined in this Agreement.
- 1.21 **RESIDENT PROJECT REPRESENTATIVE**: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Construction Phase of the Project to completion.
- 1.22 **TIME OF COMPLETION**: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 **PREAMBLE**

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

ARTICLE 3
SCOPE OF SERVICES

- 3.1 The ARTIST CONSULTANT shall perform the following professional services: artistic and computer design services and design and inspection services as more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein. ARTIST CONSULTANT shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in ARTIST CONSULTANT's level of effort.
- 3.2 CITY and ARTIST CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by ARTIST CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, ARTIST CONSULTANT determines that work should be performed to complete the Project which is in the ARTIST CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, ARTIST CONSULTANT shall notify Contract Administrator and obtain written approval by the CITY in a timely manner before proceeding with the work. If ARTIST CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by ARTIST CONSULTANT outside the originally anticipated level of effort without prior written CITY approval is at ARTIST CONSULTANT's sole risk.
- 3.3 CITY and ARTIST CONSULTANT acknowledge that Basic Services described in Exhibit "A" are included in the fee agreed upon. The CITY and ARTIST CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for future phases of Project. If CITY and ARTIST CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations at no cost to CITY and procure services for future Project phases from another source.

ARTICLE 4
GENERAL PROVISIONS

- 4.1 ARTIST CONSULTANT shall include CITY's specific Contract reference as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5
TASK ORDERS FOR ADDITIONAL SERVICES

- 5.1 If Task Orders for additional services are required, they shall be jointly prepared by the CITY and ARTIST CONSULTANT defining the detailed scope of services to be provided for the Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable CITY code requirements. These Task Orders shall be considered supplemental to the general description of basic services as described in Exhibit "A".
- 5.2 Under all Task Orders and Project, CITY may require the ARTIST CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:
- 5.2.1 Providing additional copies of reports, contract drawings and documents; and
- 5.2.2 Assisting CITY with litigation support services arising from the planning, development, or construction.
- 5.3 Prior to initiating the performance of any services under this Agreement, ARTIST CONSULTANT must receive a written Notice to Proceed / Purchase Order from the CITY. The ARTIST CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.4 In the event ARTIST CONSULTANT is unable to complete the services on the date or dates as provided in this Agreement, or subsequent Task Orders, because of delays resulting from the untimely review and approval by CITY and other governmental authorities having jurisdiction over the Project, CITY may grant an appropriate extension of time for completion of the work. It shall be the responsibility of the ARTIST CONSULTANT to notify the CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.
- 5.5 If, in the opinion of the CITY, the ARTIST CONSULTANT is improperly performing the services under a specific supplemental Task Order, or if at any time the CITY shall be of the opinion that said supplemental Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the ARTIST CONSULTANT in writing. The ARTIST CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the ARTIST CONSULTANT fails to cure within the ten (10) working days, the CITY may notify the ARTIST CONSULTANT to discontinue all work under the specified Task Order. The ARTIST CONSULTANT

shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new supplemental Task Order for the uncompleted work to another Artist Consultant using the remaining funds. Any excess costs arising therefrom over and above the original supplemental Task Order price shall be charged against ARTIST CONSULTANT, as the original ARTIST CONSULTANT.

ARTICLE 6 TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 ARTIST CONSULTANT shall perform the basic services within a fifteen (15) month time period as described in Exhibit "A" and Exhibit "B" CITY and ARTIST CONSULTANT shall agree upon a Project schedule. The Project schedule, once complete, shall be automatically incorporated into this Agreement. Said time periods shall commence from the date of the Notice to Proceed for such services. It is noted that a number of factors affecting the project are beyond the control of the ARTIST CONSULTANT, including work by others. If necessary, the City shall determine and implement the appropriate adjustment to the schedule.
- 6.2 The time for the performance of services described in Exhibit "A," Scope of Services and supplemental Task Orders shall be negotiated by the CITY and the ARTIST CONSULTANT as the services are requested and authorized by the CITY.
- 6.3 The Term of this Agreement shall be limited to the time required to complete the Basic Services of the Project and any additional Project related Task Orders for additional services.

ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

7.1.1 Lump Sum

CITY agrees to pay the ARTIST CONSULTANT as compensation for performance of services specified in Exhibit "A" and required under the terms of this Agreement, a Lump Sum Amount of \$201,800 (Exhibit "B"). It is agreed that the method of compensation is that of Lump Sum which means that ARTIST CONSULTANT shall perform all services set forth in Exhibit "A", and in this Agreement, for total compensation in the amount stated above.

7.2 REIMBURSABLES

7.2.1 n/a

7.3 METHOD OF BILLING

7.3.1 Lump Sum Compensation

ARTIST CONSULTANT shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings of each phase shall not exceed the amounts allocated to said phase. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, ARTIST CONSULTANT shall provide backup for past and current invoices that record hours, salary costs and expense costs on a task basis, so that total hours and costs by task may be determined. ARTIST CONSULTANT shall provide CITY with the percent complete of the Phase or Phase element or Task Order. CITY will review the percent complete of the authorized lump sum elements for reasonableness and approve payment consistent with the level of progress toward the defined lump sum scope element.

7.4 METHOD OF PAYMENT

7.4.1 CITY shall pay ARTIST CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 CITY will review ARTIST CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform ARTIST CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by ARTIST CONSULTANT to CITY.

7.4.3 Payments are made by CITY to ARTIST CONSULTANT using a CITY P-Card (MasterCard or Visa credit card).

ARTICLE 8 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and ARTIST CONSULTANT.

- 8.2 CITY or ARTIST CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the contract including the initiation of any additional services. CITY shall compensate ARTIST CONSULTANT for such additional services as provided in Article 7.
- 8.3 In the event a dispute between the Contract Administrator and ARTIST CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and ARTIST CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$100,000 per project. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution in favor of ARTIST CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, ARTIST CONSULTANT shall promptly perform the disputed services.

ARTICLE 9 ARTIST CONSULTANT'S RESPONSIBILITIES

- 9.1 The ARTIST CONSULTANT, following the CITY's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the CITY, assist the CITY in the bidding process in accordance with EXHIBIT A. If requested, the ARTIST CONSULTANT shall review and analyze the proposals received by the CITY, and shall make a recommendation for any award based on CITY's Purchasing Ordinance.
- 9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, ARTIST CONSULTANT, at no additional cost to the CITY, shall meet with the CITY's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, ARTIST CONSULTANT shall, at the CITY's direction, redesign each Project and/or work with the CITY to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the CITY. If negotiations between the CITY and the ARTIST CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events

affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the CITY after the ARTIST CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the ARTIST CONSULTANT shall not be responsible for any redesign without compensation.

- 9.3 The ARTIST CONSULTANT shall attend all pre-proposal conferences.
- 9.4 The ARTIST CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.
- 9.5 If pre-qualification of proposers is required as set forth in the request for proposal, ARTIST CONSULTANT shall assist the CITY, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, ARTIST CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the CITY.
- 9.6 The CITY shall make decisions on claims regarding interpretation of the Construction Documents, and on other matters relating to the execution and progress of the work after receiving a recommendation from the ARTIST CONSULTANT. The ARTIST CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project.
- 9.7 The CITY shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as ARTIST CONSULTANT Errors or Omissions.
 - 9.7.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the ARTIST CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the CITY which would not be incurred without the Error.
 - 9.7.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the CITY which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project,

the CITY shall not look to the ARTIST CONSULTANT for reimbursement for Errors and Omissions.

- 9.7.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the CITY shall recover the full and total additional cost to the CITY as a result of ARTIST CONSULTANT's Errors and Omissions from the ARTIST CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 9.7.4 To obtain such recovery, the CITY shall deduct from the ARTIST CONSULTANT's fee a sufficient amount to recover all such additional cost to the CITY.
- 9.7.5 In executing this Agreement, the ARTIST CONSULTANT acknowledges acceptance of these calculations and to the CITY's right to recover same as stated above. The recovery of additional costs to the CITY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the CITY may otherwise incur.
- 9.7.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under \$100,000 per project, subject to Section 8.3. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida.

ARTICLE 10 CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist ARTIST CONSULTANT by placing at ARTIST CONSULTANT's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 CITY shall arrange for access to, and make all provisions for ARTIST CONSULTANT to enter upon public and private property as required for ARTIST CONSULTANT to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified per Task Order.

- 10.4 CITY shall give prompt written notice to ARTIST CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11 MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by ARTIST CONSULTANT, its dependent professional associates and artist subconsultants, pursuant to this Agreement shall be owned by the CITY.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the ARTIST CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the ARTIST CONSULTANT in connection with the proper use of documents prepared under this Agreement. This shall not limit the CITY's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 Termination for Cause. It is expressly understood and agreed that the CITY may terminate this Agreement at any time for cause in the event that the ARTIST CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely manner upon written notice to the ARTIST CONSULTANT. Notice of termination shall be provided in accordance with Section 11.27. In the case of termination by the CITY for cause, the ARTIST CONSULTANT shall be first granted a 10 working day cure period after receipt of written notice from the CITY. In the event that the Agreement is terminated, the ARTIST CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates

for the actual time spent on the Project. In the event that the ARTIST CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, ARTIST CONSULTANT shall indemnify the CITY against any loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by ARTIST CONSULTANT shall become the property of CITY and shall be delivered by ARTIST CONSULTANT to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to ARTIST CONSULTANT, CITY shall have no further duties or obligations pursuant to or arising from this Agreement.

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, ARTIST CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, ARTIST CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed.

11.2.5 Termination by Artist Consultant. ARTIST CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the CITY of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. ARTIST CONSULTANT shall have no right to terminate this Agreement for convenience.

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of ARTIST CONSULTANT that are related to this Project. ARTIST CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

ARTIST CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to ARTIST CONSULTANT's records, ARTIST CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by ARTIST CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

ARTIST CONSULTANT shall:

a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY, all public records in possession of the ARTIST CONSULTANT upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

ARTIST CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

ARTIST CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

ARTIST CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, ARTIST CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

ARTIST CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by MBE/WBE firms in CITY projects, and in the purchase of goods and services. The ARTIST CONSULTANT shall make a good faith effort to help the CITY maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The ARTIST CONSULTANT may be required to document all such efforts and supply the CITY with this documentation at the end of the Project, or in cases where projects are longer than one year, each CITY fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

ARTIST CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may

not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or Artist Consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, ARTIST CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether ARTIST CONSULTANT has been placed on the convicted vendor list.

11.7 SUB CONSULTANTS

11.7.1 ARTIST CONSULTANT may subcontract certain items of work to Sub Consultant. The parties expressly agree that the ARTIST CONSULTANT shall submit pertinent information regarding the proposed Sub Consultant, including Sub Consultant's scope of work and fees, for review and approval by the CITY prior to sub-Artist Consultants proceeding with any work.

11.7.2 ARTIST CONSULTANT shall utilize the Sub Consultants identified in the proposal that were a material part of the selection of ARTIST CONSULTANT to provide the services for this Project. ARTIST CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of Sub Consultants submitted by ARTIST CONSULTANT.

The list of Sub-Consultants submitted is as follows.

1. Zenith Lighting, Inc.
6557 Hazeltine National Drive #7
Orlando, FL 32822
(407) 855-0088
2. The Hook Creative, Inc., DBA Trim Agency
Key Contact: Timothy Hasse
Address: 525 NW 1st Ave,
Fort Lauderdale, FL 33301
(305) 791-5001

3. Ronald L. Levinson, P.E. Consulting Engineer
530 S Federal Highway #4
Lake Worth, FL 33460
(561) 379-05835
Lic. No. FL PE 34871

11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and ARTIST CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

ARTIST CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, licensing, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

ARTIST CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of ARTIST CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall meet or exceed all professional standards of the State of Florida.

11.9 INDEMNIFICATION OF CITY

11.9.1 ARTIST CONSULTANT shall indemnify and hold harmless CITY, its officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional misconduct of ARTIST CONSULTANT and persons employed or utilized by ARTIST CONSULTANT in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, ARTIST CONSULTANT, shall, upon written notice from CITY, resist and defend such action or proceeding by counsel approved by the CITY.

11.9.2 To the extent considered necessary by Contract Administrator and CITY, any sums due the ARTIST CONSULTANT under this Agreement may be retained by CITY until all of the CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

11.9.3 The Indemnification provided above shall obligate ARTIST CONSULTANT to defend at its own expense to and through appellate, supplemental or

bankruptcy proceeding, or to provide for such defense, at CITY's option, any and all claims of liability and all suits and actions of every name and description covered by Section 11.9.1 above that may be brought against CITY whether performed by ARTIST CONSULTANT, or persons employed or utilized by ARTIST CONSULTANT.

11.10 LIMITATION OF CITY'S LIABILITY

The CITY desires to enter into this Agreement only if in so doing the CITY can place a limit on the CITY'S liability for any cause of action arising out of this Agreement, so that the CITY'S liability for any breach never exceeds the sum of \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the ARTIST CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the ARTIST CONSULTANT'S recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the CITY to the ARTIST CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the ARTIST CONSULTANT agrees that the CITY shall not be liable to the ARTIST CONSULTANT for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the CITY to the ARTIST CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY'S liability as set forth in Section 768.28, Florida Statutes, or to extend the CITY'S liability beyond the limits established in said Section 768.28; and no claim or award against the CITY shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to ARTIST CONSULTANT by the CITY under the provisions of this Agreement.

11.11 INSURANCE

11.11.1 ARTIST CONSULTANT shall provide and shall require all of its sub-Artist Consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to transact business and issue insurance policies in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The Commercial General Liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as additional

insured. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the ARTIST CONSULTANT. Any exclusions or provisions in the insurance maintained by the ARTIST CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.

- B. The ARTIST CONSULTANT shall provide the CITY an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the CITY shall be given thirty (30) days notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the ARTIST CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the CITY, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the CITY may carry in its own name.
- C. ARTIST CONSULTANT shall as a condition precedent of this Agreement, furnish to the City of Fort Lauderdale, c/o Project Administrator 100 N. Andrews Avenue, Fort Lauderdale; FL 33301, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

11.11.2 COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability:

Bodily Injury and Property Damage - Combined Single Limit	
Each Occurrence	\$1,000,000
Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$1,000,000
- B. Endorsements Required:
 - City of Fort Lauderdale included as an Additional Insured
 - Broad Form Contractual Liability
 - Waiver of Subrogation
 - Premises/Operations

Products/Completed Operations
Independent Contractors

11.11.3 AUTOMOBILE LIABILITY

Provide proof of your valid automobile liability policy

11.11.4 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Limits: Workers' Compensation – Per Florida Statute 440
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

11.11.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

General Aggregate Limit	\$1,000,000
Deductible- not to exceed	\$100,000

11.11.6 All insurance policies required above shall be issued by companies authorized to transact business and issue insurance policies under the laws of the State of Florida, with the following qualifications:

The Artist Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Artist Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

Compliance with the foregoing requirements shall not relieve the ARTIST CONSULTANT of their liability and obligation under this section or under any other section of this Agreement.

The ARTIST CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the ARTIST CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the

contractual period, the CITY shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the CITY.
- B. The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the ARTIST CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

11.12 REPRESENTATIVE OF CITY AND ARTIST CONSULTANT

11.12.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon ARTIST CONSULTANT's request, shall advise ARTIST CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 ARTIST CONSULTANT shall inform the Contract Administrator in writing of ARTIST CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

11.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.14 ARTIST CONSULTANT'S STAFF

ARTIST CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in ARTIST CONSULTANT's employment.

ARTIST CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. ARTIST CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of ARTIST CONSULTANT's staff, Contract Administrator shall first meet with ARTIST CONSULTANT and provide reasonable justification for said removal.

11.15 INDEPENDENT CONTRACTOR

ARTIST CONSULTANT is an independent contractor under this Agreement. Services provided by ARTIST CONSULTANT shall be subject to the supervision of ARTIST CONSULTANT. In providing the services, ARTIST CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of ARTIST CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.16 THIRD PARTY BENEFICIARIES

Neither ARTIST CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

11.17 CONFLICTS

Neither ARTIST CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

ARTIST CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

The ARTIST CONSULTANT's Sub Consultant's which will perform any services required by this Agreement, ARTIST CONSULTANT agrees to prohibit such Sub Consultants, by written contract, from having any conflicts as within the meaning of this Section.

11.18 CONTINGENCY FEE

ARTIST CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ARTIST CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for ARTIST CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.19 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

CITY and ARTIST CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.20 COMPLIANCE WITH LAWS

ARTIST CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or ARTIST CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and ARTIST CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement,

or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

11.24 APPLICABLE LAW AND VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, ARTIST CONSULTANT AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.26 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

11.27 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY: Public Works Director
 City of Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, FL 33301
 Telephone: (954) 828-5772

With a copy to: City Manager
 City of Fort Lauderdale
 100 North Andrews Avenue

Fort Lauderdale, FL 33301
(954) 828-5364

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
(954) 828-5037

ARTIST
CONSULTANT: Art Light Space, LLC
Attn: P Douglas McCraw
521 NW 1st Ave.
Fort Lauderdale, FL 33301

11.28 ATTORNEY FEES

If CITY or ARTIST CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.29 PERMITS, LICENSES AND TAXES

ARTIST CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. ARTIST CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and ARTIST CONSULTANT shall be responsible for complying with all state tax requirements.

11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by ARTIST CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

11.31 EVALUATION

The CITY maintains the right to periodically review the performance of the

ARTIST CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the ARTIST CONSULTANT to maintain MBE/WBE participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the ARTIST CONSULTANT to address and/or remedy such deficiencies.

11.32 STATUTORY COMPLIANCE

ARTIST CONSULTANT and its Subconsultants shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida and all governmental agencies having jurisdiction over the services to be provided by ARTIST CONSULTANT and its Subconsultants under this Agreement or over any aspect or phase of the Project.

11.33 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The ARTIST CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The CITY may terminate this Contract at the CITY's option if the ARTIST CONSULTANT is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS OF THE FOREGOING, the parties execute this Agreement as follows:

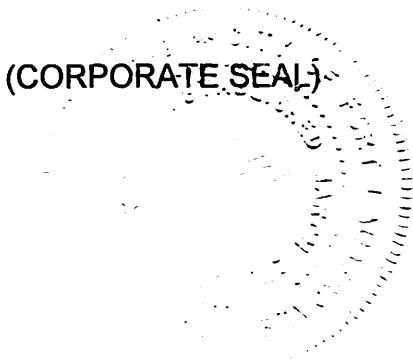
CITY:

CITY OF FORT LAUDERDALE,
a Florida municipality.

By 

LEE R. FELDMAN, City Manager

(CORPORATE SEAL)

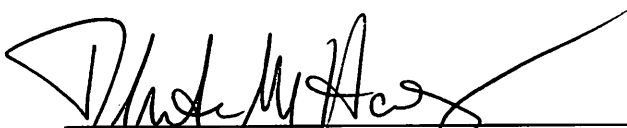


ATTEST:



JEFFREY A. MODARELLI
City Clerk

Approved as to legal form:



RHONDA MONTOYA HASAN
Assistant City Attorney

ARTIST CONSULTANT:

WITNESSES:

A.C. Poulsen

Signature

A.C. Poulsen

Print Name

Art Light Space, LLC.,
a Florida limited liability company.

By: Doug McCraw

Name: DOUG McCRAW

Title: Managing Member

Jance R Ausbon

Signature

JANCE R AUSBON

Print Name

(CORPORATE SEAL)

STATE OF Florida
COUNTY OF Broward:



The foregoing instrument was acknowledged before me this 7 day of January, 2016, by Doug McCraw as Managing Member for ART LIGHT SPACE, LLC a Florida limited liability company.

(SEAL)



MAYDA ROBERTAZZI
MY COMMISSION # FF 126011
EXPIRES: June 20, 2018
Bonded Thru Budget Notary Services

Mayda Robertazzi
Notary Public, State of Florida
(Signature of Notary Public)

Mayda Robertazzi
Name of Notary Typed, Printed or Stamped

Personally Known OR Produced Identification

Type of Identification Produced _____

EXHIBIT "A"

SCOPE OF SERVICES

ART LIGHT SPACE, LLC

NORTHWEST SECOND AVENUE WATER TOWER ART PROJECT, P11887

The Northwest Second Avenue Water Tower Art Project will transform the very visible but rundown water tower in downtown Fort Lauderdale into an iconic and symbolic piece of interactive public art. The redesign of this utilitarian structure into a piece of socially engaged artwork encourages a sense of ownership for the city and showcases Fort Lauderdale as art and tech-savvy, entertaining, fun and cultured. The tower design will be a visual and iconic landmark both day and night. The design colors are inspired by prismatic hues to provide a colorful and exciting experience by day from every direction. The water tower "comes to life" after dark with an animated light sequencing that pulses with the beat of the city to a catalog of music (streaming online) to a pre-programmed color array. The community will have the ability to "paint the tower with light" using a computer or a web enabled device and view the result in person or on a live camera feed.

DESIGN PHASE

Art, Light Space (ALS) shall present the Water Tower Project at the kickoff meeting. ALS shall create painting and lighting specifications. ALS shall attend the progress meetings providing status and forecast of upcoming work. ALS shall assemble preliminary drawings for review for quality and submit 60% complete design package to City for review, responding to City review comments. ALS shall review 90% complete design package for quality. ALS shall submit 90% design package to the City for review and attend progress meeting to provide status and forecast, responding to City review and comments. ALS shall then submit the completed 90% design package to the City. (ALS shall submit the completed 100% design package to the City, as described below in the permitting section.).

ART DESIGN / SPECIFICATIONS - ALS (Art Light Space)

GRAPHICS DESIGN

Art Project – ALS shall provide a design schematic of the tower art-scape with correlated (pantone shades) for the painting template. Consultation in the Design Phase may include coordinating with its engineering design consultant and the City, providing progress reports and attending meetings.

LIGHTING AND FIXTURE DESIGN - ALS

Lighting Plot – ALS shall provide a design layout for lighting array and placement (fixture placement site plan). The design layout shall be inclusive of light coverage and intensity for each fixture in the design array. It shall include simulation of project

operation and a "fly-by" recreation. It shall include all lighting specifications specifically designed for this project with lensing optimization for particular tower requirements. The lighting will be specified with optimum intensity (lumens), coverage, and protocol with wireless controls using RDM (Remote Device Management).

Rigging Design – ALS shall include all hardware, components, engineering, and structural design for lighting mounting and placement to code specifications. ALS shall design the following: 1) the mounting for the light fixtures to the tank exterior; 2) mounting supports for the lights; 3) electrical conduit and wire to power the lighting; 4) control conduit and wire for automated control of the lights; 5) exterior coatings; 6) weights and wind load calculations (per ASCE Standard 7-10, signed and sealed by a Professional Engineer registered in the State of Florida) for the light fixtures and light supports; supports for conduits for tank lighting power and control conduits.

Lighting Specifications provided for Bid Package.

HARDWARE - Specifications

Network Lighting Controller – ALS shall select the controller to interact with third party custom software and communicate using wireless DMX protocol interfaced with lighting array RDM.

Server – ALS shall select a server to provide intermediary between onsite controller and user devices. Second server to provide system back-up for system operations.

Internet Connection - Will be provided by City.

VIDEO SYSTEM – Specifications. ALS shall provide a design schematic and specification for the water tower video feed.

ENGINEERING DRAWINGS

Deliverables: 60% and 90% packages of all drawings, specifications, designs, components, and sealed engineering plans for lighting system in project. ALS shall provide design drawings and specifications signed and sealed by a Professional Engineer registered in the State of Florida.

PERMITTING

ALS (through its Florida licensed engineering sub consultant) shall fill out City Department of Sustainable Development (Building) application. ALS shall submit completed 90% design package to the City DSD with the permit application, responding to City DSD permit review comments. ALS shall review 90% design package for quality and respond. ALS shall attend progress meeting and provide status and forecast. ALS shall submit 100% package to DSD to satisfy permit requirements.

Deliverables: ALS shall provide 100% design drawings and specifications signed and sealed by a Professional Engineer registered in the State of Florida in accordance with the schedule approved by both parties.

BIDDING

ALS shall attend the pre bid conference and prepare responses to bidder questions. ALS shall review bids and review the City prepared Commission Agenda item.

CONSTRUCTION

ALS shall attend the pre-construction meeting. ALS shall review and approve submittals (shop drawings) for paint and lighting. ALS shall conduct ground level construction inspections, as needed, but generally at least twice per week during construction activities related to the decorative painting and lighting installation. ALS shall attend construction progress meetings. ALS shall assist the City review of contractor Applications for Payment. ALS shall review coating inspector reports and provide opinion on adequacy of painting and identify needs for correction. ALS shall program and test the lighting system and inspect the system for substantial completion and prepare a list of items to repair or complete (punch list). ALS shall conduct a punch list inspection and provide certification that the project is complete. This scope includes possible change order review.

SOFTWARE DESIGN AND INTERFACES

Software System – ALS shall design and build a web based application to be specified that is compatible with common browser platforms (TBD) with protocols to coordinate music selection and sequencing with tower lighting array. This is inclusive of music cue design and user notification of play status. Interface will connect all Application Programming Interface (API) programs to system equipment. At final project completion, ALS shall give the City non-exclusive rights to the API/programming source code and/or a contract for either delivery to the City' IT department with a white paper, or support contract so the City's IT department can assume upgrades. Upgrades will have to be pushed every 12-18 months to keep the web app compatible with the current system configurations of user computers and devices. User notification will be via SMS text messaging or similar method.

As part of the final project completion requirements, ALS shall conduct one half day training session for up to four City IT department representatives. The training shall include system start up and shut down procedures, system operation and basic to moderate level troubleshooting. Extended maintenance after final completion of the project will be conducted under a new, separate contract with ALS. ALS shall provide a user manual for the system.

ALS shall upload the program into the control system and verify the system functionality. ALS shall assist the contractor to test the system design and simulation. Additionally ALS shall provide guidance to the contractor for the system initialization and startup.

LIGHTING SYSTEM INSTALLATION, TESTING, AND INITIALIZATION ALS shall include support for upgrades to API software during the project warranty period as necessary. In line with generally accepted practice in the industry, API software

upgrades shall be free after the initial purchase of the software package for the one year warranty period.

Warranty Period – ALS shall provide troubleshooting and general assistance services to the City during the one year warranty period. When notified of an issue, ALS shall begin repairs within one business day. Any expenses borne by ALS in the repair or replacement of defective or failed equipment, software or programming shall be borne entirely by ALS. City requested upgrades or changes to the system not related to system deficiencies shall be conducted via separate contract.

ALS shall periodically inspect layout of lighting site plan to insure that it complies with the drawings and specifications.

EXHIBIT B
NORTHWEST SECOND AVENUE WATER TOWER ART PROJECT, P11887

DESIGN PHASE – 2 Months

Art Design / Specification \$60,055.00

Outside Contractors:

Engineered Drawings / Specs \$10,000.00

Lighting Plot \$ 5,000.00

Fixture Placement Site Plan \$ 5,000.00

\$ 80,055.00

PERMITTING PHASE – 2 Months

\$ 9,275.00

BIDDING – 3 Months

\$ 4,790.00

CONSTRUCTION PHASE – 2-3 Months*

\$107,680.00

TOTAL FEES

\$201,800.00

* This time is included within the overall construction period of 8 months for the tank restoration project.